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CHARLES ELMORE CROPLEY

In the

Supreme Court of the United States

OCTOBER TERM, 1945

No. 759

THE FIRST NATIONAL BANK OF LONGVIEW, TEXAS,
Petitioner,

v.

CITY OF LONGVIEW, TEXAS,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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To the Honorable Supreme Court of the United States:

Respondent desires to avail itself of the privilege granted in Section 3 of Rule 38 of this Honorable Court to file herein forty printed copies of an opposing brief to the petition for writ of certiorari, filed herein by Petitioner, and to such end would respectfully show unto the Court:

STATEMENT

Petitioner's Statement cannot be accepted as correct since facts are stated upon assumption with reference to collection of taxes by The State of Texas. The Circuit Court of Appeals makes a more accurate and satisfactory statement, which Respondent adopts as a sufficient statement of the nature and result of the suit. *City of Longview,*

Texas v. The First National Bank of Longview, Texas, 152 Fed. (2d) 97.

The Petitioner, under the heading "Reasons Relied On for Allowance of the Writ" has enumerated two reasons under Supreme Court Rule 38, paragraph 5, and makes argument concerning them under Petitioner's Points A and B, and in answer thereto Respondent respectfully states:

ARGUMENT

The Circuit Court of Appeals said that:

> "The only question presented and upon which decision must turn is: Does Section 5219 of the Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., permit, under state legislative grant, a municipal corporation to tax the shares of stock of national banks?" (R. 16.)

Respondent considers this the sole question herein involved, but if it be in error thereon, Respondent says that if the Statement of Petitioner that "the posed question is too broad" be held to be correct, then Petitioner's analysis of Section 5219, Revised Statutes of the United States, Section 548, Title 12, U. S. C. A., should itself be analyzed, for Petitioner in its analysis has failed to give consideration except to selected portions of said Article, it having briefly only mentioned Subparagraph 2 of said Article, which when fully set out, reads:

> "2. The shares of any national banking association owned by non-residents of any State shall be taxed by the TAXING DISTRICT *OR* BY THE STATE where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such non-resident shareholders." (Capitals and italics ours.)

A full reading of the quoted portion of the Article, as herein quoted, clearly expresses the intent of Congress to authorize taxation by other than the several "States" as is urged by Petitioner in its brief, and the holding that his contention is correct would, under the quoted paragraph of the Article, permit the taxing of shares of non-residents by a taxing district other than the State itself, while the shares of resident owners would be free from taxation by the taxing district, and Respondent says that such discrimination is not intended therein and that Congress had no intention of removing or restricting the right of a taxing district, of which a municipality would be one, that has been recognized by this Court for more than eighty years.

In the case of *Supervisors of the County of Albany v. Edward N. Stanley*, 105 U. S., 305; 26 L. Ed. 1044, which had under consideration an act of the State of New York for the taxing of shares of national banks, the particular tax having been assessed by the Board of Assessors of the City of Albany, the Court, speaking through Justice Miller, said in regard to said state article "which was evidently intended to meet the requirements of the Act of Congress in relation to State taxation of the shares of national banks," which article is copied in full in the opinion and, among other things, contains the following:

> "Said shares shall be included in the valuation of the personal property of such stockholder in the assessment of taxes at the PLACE, TOWN or WARD where such bank or banking association is located, and not elsewhere." (Capitals ours.)

And further in said opinion Justice Miller specifically states as follows:

> "It follows that the assessors were not without authority to assess national bank shares; that where no debts of the owners existed to be deducted, the assessment was valid and the tax paid under it a valid tax."

The case of *First National Bank of Louisville v. The Commonwealth of Kentucky*, 76 U. S., 353; 19 L. Ed. 701, the Court, speaking through Justice Miller, who wrote the opinion in the case next above, held on the question whether or not officers of national banks should be required to pay tax on the shares of stockholders, as follows:

> "It is the common, if not the only, mode of doing this in all the New England States, and in several of them the portion of this tax which should properly go as the shareholder's contribution to local or municipal taxation is thus collected by the State, of the bank and paid over to the local municipal authorities."

In this case the Court further said:

> "That while Congress intended to limit state taxation to the shares of the bank as distinguished from its capital, and to provide against the discrimination of taxing said banks unfavorable to them, that compared with the shares of other corporations and with other moneyed capital it did not intend to prescribe to the States the mode in which the tax should be collected. That the mode under consideration is the one which Congress itself has adopted in collecting tax on dividends and income arising from bonds of corporations. It is the only mode which certainly and without loss secures the payment of tax on all the shares, resident or non-resident, and, as we have already stated, it is the mode which experience has justified in the New England States as the most convenient and proper in

> regard to the numerous wealthy corporations of that State. It is not to be readily inferred, therefore, that Congress intended to prohibit this mode of collecting taxes which they expressly permitted the States to levy."

Petitioner in its brief states that the question at issue in the case at bar was not an issue and not discussed in either case cited by the Circuit Court of Appeals. In other words, that the Amendments of 1923 and 1926 changed not only the wording but the entire meaning and purpose of the Act.

In answer to this contention we respectfully call the Court's attention to the matter of the application of *Wm. Buder, et al.*, for writ of mandamus, 271 U. S. 461; 70 L. Ed. 1036, in which this Court said:

> "The Act of 1923 enlarged the scope of the state's power to tax national banks. * * * The State confessedly had the same power to tax the shares that it had before Congress enacted the 1923 Amendment."

See also *First National Bank v. Anderson*, 269 U. S., 341, 70 L. Ed. 304, in which the Court said:

> "By the Act of March 4, 1923, chap. 267, 42 Stat. at L. 1499, Fed. Stat. Anno. Supp. 1923, p. 84, passed after the levy of the tax in question, Section 5219 of the Revised Statutes was amended by extending the consent of Congress to any one of three forms of taxation. * * * But, assuming that this is true, the situation is not changed; for the reënactment did no more than to put into express words that which, according to repeated decisions of this court, was implied before."

Petitioner evidently takes the position that Article 7165, Vernon's Revised Civil Statutes of Texas, 1925, as amend-

ed, which is attached to its brief as Appendix C, is the taxing statute under which Texas has granted municipal corporations the right to tax shares of national bank stock.

Texas has several other statutes under which shares of stock of national banks are taxable, namely Article 7145, Article 7147 and Article 7166 (Appendix A, B, and C).

The Texas statutes have been construed by the appellate courts of Texas and clearly hold that municipalities have the right to tax shares of national bank stock, either under Article 7166 (Appendix C), or under Articles 7145 and 7147 (Appendix A and B).

City of Marshall v. State Bank, 127 S. W. 1083;

Dallas Joint Stock Land Bank of Dallas v. State, 137 S. W. (2d) 993;

First Joint Stock Land Bank of Chicago v. City of Dallas, 167 S. W. (2d) 783;

First National Bank of Lampasas v. City of Lampasas, 78 S. W. 42.

The Supreme Court will always follow and adopt the decisions of state courts in construction of their own constitution and statutes, when such construction has been settled by a decision of its highest judicial tribunal. *NeSmith v. Sheldon*, 48 U. S. 812; 12 L. Ed. 925.

Shares of stock in national banks are personal property. They are so made in express terms by an Act of Congress under which said banks are organized. *Tappan v. The Merchants National Bank of Chicago*, 86 U. S. 490; 22 L. Ed. 189.

In view of the hereinbefore set out decisions and direct holding in the cases of *Board of Supervisors of the County of Albany v. Edward N. Stanley, supra,* and *First National Bank of Louisville v. The Commonwealth of Kentucky, supra,* Respondent most respectfully insists that Petitioner's Point A should not be considered herein, since the above decisions by this Court cancel the ground stated for granting of the writ herein; and, as to Petitioner's Point B, Respondent respectfully shows that the herein cited cases show that the decision of the Circuit Court of Appeals herein follows the applicable decisions of this Court, and that Petitioner fails to cite one decision of this Court holding contrary to the said decision of the Circuit Court of Appeals herein.

Beyond all doubt, the Circuit Court of Appeals has correctly decided this case, and the Petition for Certiorari should be denied. THEREFORE,

It is respectfully prayed that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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